

APPEAL NO. 032051
FILED SEPTEMBER 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 18, 2003. The hearing officer determined that the appellant/cross-respondent (claimant) had not sustained a compensable repetitive trauma injury on _____, but gave timely notice of this injury to his employer. The hearing officer held that the claimant was unable to work beginning January 10, 2003, and continuing through the date of the hearing, but that due to the lack of a compensable injury there was no disability. Both parties have appealed. The respondent/cross-appellant (carrier) appeals the date of injury and timely notice determinations and the claimant asserts that these determinations are supported by the evidence. The claimant argues that the determinations that he did not have a compensable injury and disability are against the great weight and preponderance of the evidence. The carrier responds that these determinations are correct. There is no appeal of the determination that the claimant was unable to obtain or retain employment at wages equivalent to the claimant's pre-injury wage from January 10, 2003, through the date of the hearing and this has now become final pursuant to Section 410.169.

DECISION

Affirmed.

DATE OF INJURY AND TIMELY NOTICE

The carrier contends that the hearing officer erred in making the date of injury and timely notice determinations in the claimant's favor. There was conflicting evidence concerning date of injury and notification to the employer. We have reviewed the complained-of determinations regarding the date and notice of injury and conclude that these issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

OCCURRENCE OF AN INJURY AND DISABILITY

Section 401.011(36) defines repetitive trauma injury as "damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment." To recover for an occupational disease of this type, one must not only prove that repetitious, physically traumatic activities occurred on the job, but also must prove that a causal link existed between these activities on the job and one's incapacity;

that is, the disease must be inherent in that type of employment as compared with employment generally. Davis v. Employer's Insurance of Wausau, 694 S.W.2d 105 (Tex. App.-Houston [14th Dist.] 1985, writ ref'd n.r.e). The hearing officer acknowledged that the medical records established that the claimant had been diagnosed with a low back injury, but the hearing officer was not persuaded that the claimant sustained his burden of proof regarding causation. The hearing officer noted that there was not a showing of sufficiently repetitive activity during the day to support a repetitive trauma injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Our review of the record reveals that the hearing officer's determinations regarding compensable injury and disability are supported by sufficient evidence and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb the challenged determinations on appeal. Cain, *supra*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge